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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GREG ALAN BENGELT, JEFFREY PAUL HARRANG,  
WILLIAM R. RICHARDS, MICHAEL GABRIEL LYNCH,  
MICHAEL DE LA CHAPELLE, PAULUS JOHANNESMARTENS,  
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GEOFFREY WHITE, GEORGE FITZSIMMON,  
RUSSELL BERKHEIMER, ROBERT P. HIGGIN,  
and ARTHUR F. MORRISON

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Appeal 2010-005716  
Application 09/639,912  
Technology Center 2400

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*Before*, JEAN R. HOMERE, THU A. DANG and  
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-23. Appeal Brief 2. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We affirm.

### *Introduction*

Appellants invented a system that for providing live television programming and Internet connectivity to occupants of an in-flight mobile platform. Appeal Brief 13.

### *Illustrative Claim*

1. A system for providing data content to a plurality of mobile platforms via at least one satellite having at least one radio frequency (RF) transponder, and for transmitting data content from said mobile platforms via said RF transponder to a ground-based control center, comprising:

- an independent mobile system associated with each said mobile platform and carried by each said mobile platform;

- a ground-based antenna system associated with said ground-based control center for transmitting encoded RF signals representative of said data content via said RF transponder to said mobile system;

- each said mobile system comprising:

- a steerable transmit antenna and a steerable receive antenna;

- a communications subsystem in communication with each of said antennas for generating baseband video signals and

data signals from said encoded RF signals received by said receive antenna, and for producing encoded signals from data transmissions input by each of a plurality of occupants;

a data content management system for filtering of portions of said data content not addressed to occupants on said mobile platform;

a network for distributing said baseband video signals and said data signals output from said data content management system to said occupants, said network including a plurality of access stations, whereby individual occupants receive only specific subportions of said baseband video signals and said data signals relating to previous information selections made by said occupants; and

said independent mobile system also operating to transmit said signals input by each of said occupants from each of said access stations, via said RF transponder, to said ground-based antenna system.

#### *Rejection on Appeal*

Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Polivka (U.S. Patent Number 5,463,656; issued October 31, 1995) and Wagner (U.S. Patent Number 5,761,602; issued June 2, 1998). Answer 3-7.

#### *Issue on Appeal*

Do Polivka and Wagner, either alone or in combination, disclose the limitations “a data content management system for filtering of portions of said data content not addressed to occupants on said mobile platform...”

“whereby individual occupants receive only specific subportions of said baseband video signals,” as recited in claim 1?

#### ANALYSIS

Appellants argue Polivka does not provide or suggest any structure or operation that:

[P]rovid[es] an on-board network that has the ability to intelligently discern what specific portions of data, video or Internet content being received by the on-board mobile system is to be used for distribution to its occupants, as well as what specific portions of data, video and/or Internet content have been requested by which occupants, and determining which specific portions of data, video or Internet content need to be delivered to which specific occupants of the mobile platform.

Appeal Brief 14-15.

Appellants further contend that, “It will be noted that the independent claims all provide this or a similar limitation.” *Id* at 15.

For example, independent claim 1 in pertinent part provides:

a network for distributing said baseband video signals and said data signals output from said data content management system to said occupants, said network including a plurality of access stations, whereby individual occupants receive **only specific subportions of said baseband video signals and said data signals relating to previous information selections made by said occupants**; and

said independent mobile system also operating to transmit said signals input by each of said occupants from each of said access stations, via said RF

transponder, to said ground-based antenna system. (Emphasis added)As another example, independent claim 6 provides in pertinent part:

a distribution system for routing said portions of said baseband video signals to specific ones of said access stations in response to requests by said occupants, such that **each said occupant receives only a portion of said baseband video signals in accordance with said request made by each said occupant...** (Emphasis added)

*Id.*

Appellants argue that Polivka does not disclose the claimed features, as indicated above; rather Polivka “simply provides a single video stream of information/content received at the aircraft 12 to a collection of one or more video monitors located throughout the aircraft, and such information content is apparently provided simultaneously to all of the aircraft’s occupants for viewing.” Appeal Brief 16.

Appellants further argue and conclude:

Thus, there is no provision for individual passengers on the aircraft to request information content, and to be provided with only their previously requested information content. Furthermore, in Polivka et al. it appears that only one type of information content is provided (albeit via a plurality of monitors) to the occupants of the aircraft. The occupants do not have the ability to each request and receive different types of information content, or even specific portions of the same content. Basically, it appears that everyone on the aircraft would have to watch the same programming (albeit possibly via several monitors). Furthermore, it does not appear in Polivka et al. that any individual passenger would have the ability to specifically

request a certain type of programming, let alone two or more passengers being able to request completely different types of information content.

Appeal Brief 16-17.

However, the Examiner did not rely upon Polivka alone; the Examiner cited Wagner to address the deficiencies noted in Polivka.

The Examiner finds:

Polivka teaches communicating video/data information (video, teleconference, etc., data) to one or more video monitors throughout the aircraft for viewing by passenger, but silent to Internet data.

However, note the Wagner reference figures 1-3, discloses hybrid multi-channel data transmission system utilizing a broadcast medium to broadcast Internet data via satellite to remote clients (col.3, line 28-col.4, line 27, line 42-col.5, line 25 and col.7, line 65-col.8, line 45).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of Wagner to the system of Polivka to broadcast specific Internet data via satellite to remote clients within a specific geographical area, including clients on-board an aircraft.

Answer 5.

Appellants argue that Wagner falls short in addressing the deficiencies of Polivka because Wagner is directed to making more efficient use of a cable TV line by “interjecting Internet information into the video signals being transmitted from the cable head end box 7 to the client 2 (i.e. modem) via the cable line (link 6 in Figure 1).” Appeal Brief 18-19.

Appellants conclude:

There is no discussion or suggestion of potentially using the teachings of Wagner et al. in connection with a mobile system adapted to receive signals from a satellite based transponder, nor any discussion or suggestion as to how information content being transmitted in Wagner et al. could be managed by each mobile platform to ensure that only information intended for its occupants is used, and then further exactly how specific portions of the received (i.e., filtered off) information content will be distributed to those individuals in accordance with their previously made information requests.

Appeal Brief 18-19.

We find Appellants' arguments are predicated on non-functional descriptive material (i.e., the type or content of the claimed video signals). Appeal Brief 15. Given the support in Appellants' Specification (describing content sources as providing audio and/or video signals and data streams, pages 11-12), we conclude that the claimed "baseband video signals" and "data signals" cover audio and/or video material that is "useful and intelligible only to the human mind." See *In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) (quoting *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969)) (distinguishing such claim limitations from claim limitations defining functional characteristics).

The *informational content* of **non-functional descriptive** material is not entitled to weight in the patentability analysis. *Lowry*, 32 F.3d at 1583 (Fed. Cir. 1994) ("Lowry does not claim merely the information content of a memory .... Nor does he seek to patent the content of information resident in a database."). See also *Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential); *Ex parte Curry*, 84



USPQ2d 1272 (BPAI 205) (informative) (Federal Circuit Appeal No. 2006-1003, *aff'd*, Rule 36 (June 12, 2006)); *Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (informative), *aff'd*, 191 Fed. Appx. 959 (Fed. Cir. 2006).

Here, the informational content of the claimed “baseband video signals” and “data signals” represent nonfunctional descriptive material that is entitled to no weight in the patentability analysis. In particular, the claimed “baseband video signals” and “data signals” are not positively recited in representative claim 1 as changing or altering the machine or computer so as to impart functionality (i.e., the “baseband video signals” and “data signals” are not executable instructions).

Further, claim 1 recites, “whereby individual occupants receive only specific subportions of said baseband video signals and said data signals relating to previous information selections made by said occupants.” We find this limitation pertains to what the occupant, i.e., a human being, does — receive data. We note that the human being can choose to receive only specific data, which we find to be purely a mental process. That is, although Appellants argue that the network has the ability to discern the data, in actuality, the action to discern the data stems from the occupant in the claim and not by the network in the claim.

Consequently, we do not find Appellants’ arguments to be persuasive because the type of data content does not modify the way the data is received by the occupant and therefore the type of data received is merely descriptive of the data and without relating functionally to the receipt of the data, the claims limitations are considered to be non-functional descriptive material and are not given patentable weight for the reasons stated above. Thus, providing the claims their broadest reasonable interpretation,

the claims only require a network to distribute the data and the cited prior art (Polivka and Wagner) discloses distribution of data via a network. Answer 4.

Therefore, we sustain the Examiner's rejection of independent claim 1, as well as, independent claims 6, 13, 18, 21 and 23, argued together (Appeal Brief 13-23), which recite limitations commensurate in scope. We also affirm the rejection of claims 2-5, 7-12, 14-17, 19, 20 and 22 which are dependent upon claims 1, 6, 13, 18, 21 and 23 respectively which are not separately argued.

#### DECISION

The rejection of claims 1-23 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

#### AFFIRMED

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